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Public Bank Bhd v Wong Sing Hua & Anor

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HIGH COURT (SIBU) — EXECUTION NO SBW-36-1–1 OF 2025(HC)
WONG SIONG TUNG J
11 APRIL 2025

C

Civil Procedure — Judgments and orders — Prohibitory order — Plaintiff as judgment creditor obtained judgment against defendants as judgment debtors — Plaintiff applied for prohibitory order to be issued under writ of seizure and sale for seizure of defendants' rights and interest on land — Defendants not registered owners of land but right and interest derived by virtue of sale and purchase agreement — Whether defendants' unregistered equitable interest as purchasers of land against registered co-proprietors could be seized by prohibitory order and sold under writ of seizure and sale to satisfy monetary judgment obtained by plaintiff — Rules of Court 2012 O 47 r 6

D

The judgment creditor ('the plaintiff') had obtained judgment against the judgment debtors ('the defendants') for the sum of RM279,818.77. To enforce the judgment, by this application, the plaintiff applied under O 47 r 6 of the Rules of Court 2012 ('the ROC'), for a prohibitory order to be issued under a writ of seizure and sale for seizure of the defendants' rights and interests in a parcel of land together with the building thereon and appurtenance thereof ('Lot 8051'). Lot 8051 was a subdivided lot with issued title now, derived from the development and subdivision of the master lot. However, Lot 8051 remained registered in the names of 38 co-owners who entered into agreements with Nice Realty Sdn Bhd, which undertook the development of the land. The defendants were not among these registered co-owners or were yet to be registered as the co-owners of Lot 8051. The defendants' right and interest in Lot 8051 were derived and were by virtue of a sale and purchase agreement ('SPA') by which the defendants agreed to purchase and two of the registered co-owners agreed to sell Lot 8051. The plaintiff also granted the defendants a housing loan of RM324,000 to finance the purchase of Lot 8051 pursuant to the SPA, to be secured by a charge on Lot 8051 to be registered after Lot 8051 was transferred and registered in the name of the defendants as co-owners. The housing loan had been released by the plaintiff and a memorandum of charge in ex-escrow was also executed by the defendants in favour of the plaintiff. The plaintiff submitted, inter alia, that the unregistered interest of the defendants as purchasers of Lot 8051 could be seized and taken in execution by writ of seizure and sale by way of a prohibitory order under O 47 r 6 of the ROC and be sold in such execution under O 47 r 7 of the ROC.

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Held, dismissing the application:

(1) The defendants' unregistered equitable interest in Lot 8051, specifically their rights as purchasers against the co-proprietors under the SPA, was not a recognised dealing that could be registered under any provision of the Land Code (Cap 81) until the instrument of transfer, executed by all the co-proprietors in favour of the defendants, was duly registered. Even if such an unregistered equitable interest could be seized and sold, the purchaser would acquire only so much of the right of the defendants' right as against the vendors under the SPA. To render the interest in Lot 8051 registrable, the purchaser would still be required to take further steps, such as suing the co-proprietors for specific performance or pursuing other legal remedies by virtue of the SPA, that the defendants themselves would have had to undertake. The defendants' unregistered equitable interest in Lot 8051, being a right of action arising from the SPA made with the vendors, was an intangible interest in land. As such, it was not capable of being seized by a prohibitory order or sold under a writ of seizure and sale. The prohibitory order and writ of seizure and sale sought by the plaintiff were not appropriate modes of execution in respect of the defendants' unregistered equitable interest in Lot 8051 (see paras 58–60, 65 & 67).

[Bahasa Malaysia summary

Pemiutang penghakiman ('plaintif') telah memperoleh penghakiman terhadap penghutang penghakiman ('defendan') bagi jumlah sebanyak RM279,818.77. Untuk menguatkuasakan penghakiman tersebut, melalui permohonan ini, plaintif memohon di bawah A 47 k 6 Kaedah-Kaedah Mahkamah 2012 ('KKM'), agar perintah larangan dikeluarkan di bawah writ penyitaan dan penjualan bagi menyita hak dan kepentingan defendan dalam sebidang tanah berserta bangunan di atasnya dan kemudahan-kemudahan berkaitannya ('Lot 8051'). Lot 8051 adalah lot pecah sempadan dengan hakmilik yang dikeluarkan kini, yang berasal daripada pembangunan dan pecah sempadan lot induk. Walau bagaimanapun, Lot 8051 kekal didaftarkan atas nama 38 pemilik bersama yang telah memasuki perjanjian dengan Nice Realty Sdn Bhd, yang menjalankan pembangunan tanah tersebut. Defendan bukan di kalangan pemilik bersama berdaftar ini atau belum didaftarkan sebagai pemilik bersama Lot 8051. Hak dan kepentingan defendan dalam Lot 8051 diperoleh dan adalah berdasarkan perjanjian jual beli ('SPA') yang melaluinya defendan bersetuju untuk membeli dan dua daripada pemilik bersama berdaftar bersetuju untuk menjual Lot 8051. Plaintif juga telah memberikan defendan pinjaman perumahan sebanyak RM324,000 untuk membiayai pembelian Lot 8051 menurut SPA tersebut, yang akan dijamin oleh cagaran atas Lot 8051 yang akan didaftarkan selepas Lot 8051 dipindah milik dan didaftarkan atas nama defendan sebagai pemilik bersama. Pinjaman perumahan telah dikeluarkan oleh plaintif dan memorandum cagaran secara ex-escrow turut dilaksanakan oleh defendan memihak kepada plaintif. Plaintif berhujah, antara lain, bahawa kepentingan tidak berdaftar defendan sebagai pembeli Lot

8051 boleh disita dan diambil dalam pelaksanaan melalui writ penyitaan dan penjualan melalui perintah larangan di bawah A 47 k 6 KKM dan dijual dalam pelaksanaan tersebut di bawah A 47 k 7 KKM.

Diputuskan, menolak permohonan:

(1) Kepentingan ekuiti tidak berdaftar defendan dalam Lot 8051, khususnya hak mereka sebagai pembeli terhadap pemilik bersama di bawah SPA, bukanlah urusan yang diiktiraf yang boleh didaftarkan di bawah mana-mana peruntukan Kanun Tanah (Cap 81) sehingga instrumen pindah milik, yang dilaksanakan oleh semua pemilik bersama memihak kepada defendan, didaftarkan dengan sewajarnya. Sekalipun kepentingan ekuiti tidak berdaftar sedemikian dapat disita dan dijual, pembeli hanya akan memperoleh hak defendan sebanyak mana hak terhadap penjual di bawah SPA tersebut. Untuk menjadikan kepentingan dalam Lot 8051 boleh didaftarkan, pembeli masih perlu mengambil langkah-langkah selanjutnya, seperti mendakwa pemilik bersama untuk pelaksanaan spesifik atau meneruskan remedi lain di sisi undang-undang berdasarkan SPA, yang defendan sendiri sepatutnya laksanakan. Kepentingan ekuiti tidak berdaftar defendan dalam Lot 8051, yang merupakan hak tindakan yang timbul daripada SPA yang dibuat dengan penjual, adalah kepentingan tersembunyi dalam hartanah. Oleh itu, ia tidak dapat disita melalui perintah larangan atau dijual di bawah writ penyitaan dan penjualan. Perintah larangan dan writ penyitaan dan penjualan yang dimohon oleh plaintif bukanlah cara pelaksanaan yang sesuai berhubung dengan kepentingan ekuiti tidak berdaftar defendan dalam Lot 8051 (lihat perenggan 58–60, 65 & 67).]

Cases referred to

Bachan Singh v Mahinder Kaur & Ors [1956] 1 MLJ 97 (refd)
Chin Cheng Hong v Hameed & Ors [1954] 1 MLJ 169, CA (refd)
Holee Holdings (M) Sdn Bhd v Chai Him & Ors [1997] 4 MLJ 601, HC (refd)
Legione and another v Hateley (1983) 46 ALR 1, HC (refd)
Livi, Re; Real Property Act (1930) 30 SR (NSW) 447 (folld)
Scott v Scholey and another (1807) 103 ER 423, KBD (refd)
Reference by the Registrar of Titles, Selangor, under section 238 of the Land Code, 1926 [1935] 1 MLJ 287 (refd)

Legislation referred to

Debtors Act 1957 s 3, 3(1), (2)
Exchange Control Act 1953
Interpretation Acts 1948 and 1967 s 3
Interpretation Ordinance 2005 (Cap 61) s 3
Land Code (Cap 81) ss 2 , 112(1), 171, 183, 238
Rules of Court 2012 O 45 rr 1, 12, O 46 rr 1, 4, 4(2), 6(1), O 47 rr 6,

A 6(f), 7, 7(b), (e), (f), (g), (h), (h)(i), (h)(ii), (j), (k), (l), O 51A r 4, 4(d), Forms 84, 85
Rules of the High Court 1980 (repealed by Rules of Court 2012)
Stamp Act 1949
Subordinate Court Rules 1980 (repealed by Rules of Court 2012) O 30
B r 13, Form 80A

William Ting Siew Chon (with Grace Ngu) (Tang & Partners) for the judgment creditor.
Absent for the judgment debtor.

C

Wong Siong Tung J:

INTRODUCTION

The interest of the defendants/judgment debtors sought to be seized

D

[1] The plaintiff/judgment creditor obtained judgment against the defendants/judgment debtors for the sum of RM279,818.77 with interest accruing and costs.

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[2] To enforce the judgment, by this ex parte application, the plaintiff/judgment creditor applies under O 47 r 6 of the Rules of Court 2012, for a prohibitory order to be issued under a writ of seizure and sale for seizure of the defendants/judgment debtors' rights and interest in all that parcel of land
F together with the building thereon and appurtenance thereof situate at Jalan Rantau Panjang, Sibu containing area of 586.60sqmt, more or less and described as LOT 8051 BLOCK 6 SEDUAN LAND DISTRICT (formerly known as Sublot 103 comprised in Sibu Occupation Ticket No 7453 (replaced by Lot 8425 Block 6 Seduan Land District) ('Lot 8051') which comprises of a
G single storey terraced house constructed thereon.

[3] Lot 8051 is a subdivided lot with issued title now, derived from development and subdivision of the land previously held under Sibu Occupation Ticket No 7453 (replaced by Lot 8425 Block Seduan Land
H District) (the master lot).

[4] However, Lot 8051 remains registered under the names of 38 co-owners who entered into a development agreement dated 8 August 2005 and a supplementary agreement dated 10 August 2010 with Nice Realty Sdn Bhd,
I which undertook the development of the land under the master lot.

[5] The defendants/judgment debtors are not among the registered co-owners of Lot 8051 or defendants/judgment debtors yet to be registered as the co-owners of Lot 8051.

[6] The defendants/judgment debtors' right and interest in Lot 8051 is derived and by virtue of sale and purchase agreement made on 29 December 2020 by which defendants/judgment debtors agreed to purchase and two of the registered co-owners, namely Hii Jang Buong and Hii Leh Houng (the vendors) agreed to sell Lot 8051 for the price of RM360,000.

[7] The plaintiff/judgment creditor also granted the defendants/judgment debtors a housing loan of RM324,000 to finance the purchase of Lot 8051 pursuant to the said sale and purchase agreement, to be secured by a charge on Lot 8051 to be registered after Lot 8051 is transferred and registered in the name of the defendants/judgment debtors as co-owners.

[8] It seems that the housing loan has been released by the plaintiff/judgment creditor and a memorandum of charge in ex-escrow was also executed by the defendants/judgment debtors in favour of the plaintiff/judgment creditor but not registered, as Lot 8051 has yet to be transferred and registered in the name of the defendants/judgment debtors.

[9] Therefore, any rights and interests of the defendants/judgment debtors remain unregistered under the Land Code (Cap 81).

[10] Short of being a registered interest under the Land Code (Cap 81) it is an equitable interest in Lot 8051 dependant on the ability of the defendants/judgment debtors to obtain specific performance against the vendors of the said sale and purchase agreement to cause the legal title of Lot 8051 to be transferred and registered in name of the defendants/judgment debtors or ability of the defendants/judgment debtors to protect their interest under the said sale and purchase agreement by injunction or otherwise. It is a right in contract against the vendors.

See: *Bachan Singh v Mahinder Kaur & Ors* [1956] 1 MLJ 97 at p 98; *Chin Cheng Hong v Hameed & Ors* [1954] 1 MLJ 169 at p 170; *Holee Holdings (M) Sdn Bhd v Chai Him & Ors* [1997] 4 MLJ 601; and *Legione and another v Hateley* (1983) 46 ALR 1 at p 29 line 31 to 45

The submissions of the plaintiff/judgment creditor

[11] The learned counsel for the plaintiff/judgment creditors essentially submitted that defendant/judgment debtor's unregistered beneficial interest enforceable in equity against the two of the registered co-proprietors of Lot 8051 and under the said sale and purchase agreement, qualifies as 'immovable property' or 'interest' of the defendant/judgment under O 47 rr 6 and 7 of the Rules of Court 2012 by virtue of the definition of 'immovable property' under s 3 of the Interpretation Acts 1948 and 1967 and s 3 of the Interpretation Ordinance 2005 (Cap 61).

[12] The learned counsel for the plaintiff/judgment creditors therefore submitted that the unregistered interest the defendants/judgment debtors as purchasers of Lot 8051 can be seized and taken in execution by writ of seizure and sale by way of a prohibitory order under O 47 r 6 of the Rules of Court 2012 and be sold in such execution under O 47 r 7 of the Rules of Court 2012.

[13] The learned counsel for the plaintiff/judgment creditors also submitted, in any event, the court should exercise its inherent jurisdiction to recognise the equitable mortgage of the plaintiff/judgment creditor and order the sale of the unregistered beneficial interest of the defendants/judgment debtors in Lot 8051.

The issues, related statutory provisions, analysis and findings

[14] Section 3(1) of the Debtors Act 1957, generally provides that subject to court rules, any unpaid sum under a judgment may be recovered through legal or equitable execution against the debtor's movable or immovable property.

[15] Section 3(1) of the Debtors Act 1957 also provides that certain assets are not liable to attachment, seizure or sale in such execution, generally as follows:

(a) clothing, cooking utensils, beds, and bedding of the debtor and their family, as well as trade tools up to RM200 in value;

(b) tools of artisans, and for agriculturalists, farming implements, necessary livestock, seed-grain, and produce;

(c) houses and buildings (including materials and adjoining land) owned and occupied by an agriculturalist;

(d) books of account;

(e) pensions, gratuities, or allowances granted by the Government of Malaysia or Government of any State or designated public bodies by the Yang di-Pertuan Agong by notification in *Gazette*;

(f) wages and salary of a judgment debtor to a sum of RM200 per month, any excess may be subject to execution according to the prescribed court rules;

(g) movable property of the judgment debtor protected under laws related to land revenue debts; and

(h) the judgment debtor's share in a partnership, which may be subject to a charging order under partnership laws.

[16] Section 3(2) of the Debtors Act 1957 further provides that the

exemption for houses, buildings, and adjoining land from attachment, seizure and sale does not apply if the judgment debt relates to unpaid rent for such property.

[17] Subject to s 3 of the Debtors Act 1957, there is no doubt that the defendants'/judgment debtors' equitable interest in Lot 8051 may be attached in execution to satisfy the monetary judgment obtained by the plaintiff/judgment creditor against the defendants/judgment debtors.

[18] Order 45 r 1 of the Rules of Court 2012 provides that a judgment or order for the payment of money may be enforced generally, by various modes as follows:

(a) by writ of seizure and sale;

(b) garnishee proceedings;

(c) when the judgment or order required the payment of the money within a specified time, by an order of committal;

(d) by a charging order; and

(e) the appointment of a receiver.

[19] The issue in this application is whether the defendants'/judgment debtors' unregistered equitable interest as purchasers of Lot 8051 against two of the registered co-proprietors can be seized by a prohibitory order and sold under a writ of seizure and sale to satisfy the monetary judgment obtained by the plaintiff/judgment creditor.

[20] In this case, the court is concerned solely with the writ of seizure and sale and the prohibitory order issued pursuant thereto, and not with other modes of execution or attachment.

[21] For the enforcement of a judgment or order for the payment of money by a judgment creditor against a judgment debtor through a writ of seizure and sale, O 45 r 12 of the Rules of Court 2012 prescribes that the writ shall be in Form 84 for movable property and in Form 85 for immovable property.

[22] The prescribed writ of seizure of sale for movable property in Form 84 comprises of an order issued by the Chief Judge of Malaya or Sabah and Sarawak in the name of the Yang di-Pertuan Agong, commanding the Sheriff to enforce the recovery of a judgment debt.

[23] By the writ, the Sheriff is directed to identify, seize, and, if necessary, sell the movable property of the judgment debtor, as identified by the judgment

creditor, to satisfy the outstanding judgment amount. The Sheriff is required then report back to the court on the execution of the writ.

[24] However, for writ of seizure and sale for immovable property, the prescribed Form 85 is, not a writ in a conventional or traditional format framed as a direct command and bear the authority from the Chief Judge of Malaya or Sabah and Sarawak in the name of the Yang di-Pertuan Agong, directing enforcement by the Sheriff.

[25] The prescribed Form 85 for writ of seizure and sale for immovable property is framed like a court order upon an application made with affidavit in support, ordering the interest of the judgment debtor in the immovable property as specified 'be attached and taken in execution' to satisfy the judgment for payment of money obtained by the judgment creditor.

[26] Order 46 r 4 of the Rules of Court 2012 then provides for the procedures, generally, to obtain the issuance of writ of execution (which definition includes writ of seizure and sale under O 46 r 1 of the Rules of Court 2012) which, under O 46 r 4(2) of the Rules of Court 2012, require a praecipe in one of the forms in Form 89 to be filed.

[27] The applicable form for a praecipe for the issuance of a writ of seizure and sale is Form (1) of Form 89, which takes the form of a request addressed to the Registrar for the issuance of the writ.

[28] Pursuant to O 46 r 4(2) of the Rules of Court 2012, when a writ is tendered for sealing, presumably accompanied by the prescribed praecipe, the following documents must be produced:

(a) the judgment or order sought to be enforced;

(b) where applicable, the order granting leave to enforce the judgment; and

(c) where the judgment creditor resides outside the scheduled territories, the written permission of the controller under the Exchange Control Act 1953.

[29] The procedure prescribed under O 46 r 4(2) of the Rules of Court 2012 for the issuance of a writ of seizure and sale does not distinguish between movable and immovable property. It appears to be uniformly applicable to writs for the seizure and sale of both types of property, without any differentiation in the procedural requirements.

[30] However, the application of the procedure prescribed under O 46 r 4(2) of the Rules of Court 2012 for the issuance of a writ of seizure and sale appears

incongruous with the format and requirements of Form 85, which is specifically designed for the seizure and sale of immovable property. A

[31] Form 85 anticipates that the application will be formally made by way of notice of application, supported by an affidavit, and expressed as an order for the specified immovable property to 'be attached and taken in execution'. B

[32] Order 46 r 6(1) of the Rules of Court 2012 provides that a writ of execution, including a writ of seizure and sale for movable property (Form 84) and for immovable property (Form 85) is, in the first instance, valid for a period of 12 months commencing from the date of its issuance. C

[33] For seizure of property consisting of immovable property or any registered interest therein, O 47 r 6 of the Rules of Court 2012 provides as follows: D

> 6 Immovable property (O 47 r 6)
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> Where the property to be seized consists of *immovable property or any registered interest therein*, the following provisions shall apply:
>
> (a) a *seizure shall be* made by an order by the Court or a Judge prohibiting the judgment debtor from transferring, charging or leasing such property or interest; and for the purpose of this rule, 'charging' includes the creation of a lien by deposit of a document of title; E
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> (b) an application for an order under this rule may be made ex parte by a notice of application; F
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> (c) the application shall be supported by an affidavit —
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> (i) identifying the judgment or order to be enforced;
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> (ii) stating the name of the judgment debtor in respect of whose immovable property or interest an order is sought; G
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> (iii) stating the amount remaining unpaid under the judgment or order at the time of application;
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> (iv) specifying the immovable property or the interest therein in respect of which an order is sought; and H
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> (v) stating that to the best of the information or belief of the deponent, the immovable property or interest in question is the judgment debtor's and stating the sources of the deponent's information or the grounds for his belief. I
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> (d) a copy of the order shall be served on the judgment debtor and as many copies as the case may require shall be issued to the judgment creditor in order that he may present the same, in compliance with the provision of any written law relating to *such land, for registration at the Registry of Titles*

or Land Office whereat the land or interest in land specified in such order is registered;

(e) a prohibitory order issued under this rule shall not affect any *immovable property or registered interest therein* and any *immovable property or registered interest therein* shall not be *deemed to have been seized* until such prohibitory order has been registered as provided by any written law relating to such land;

(f) subject to subparagraph (g), *any prohibitory order shall, upon the expiration of six months from the date thereof*, cease to affect the immovable property or registered interest therein specified in such order;

(g) upon the application of any judgment creditor on whose application a prohibitory order has been issued, the Court or a Judge, if it or he considers that special circumstances render an extension just, may from time to time by order extend the period of six months referred to in subparagraph (f), for any period not exceeding six months, provided that an order made under this rule shall not have any force or effect unless it is presented for registration at the Land Office or Registry of Titles before the expiration of the prohibitory order which such order purports to extend;

(h) subparagraph (d) shall apply to orders made under subparagraph (g);

(i) when a judgment creditor has obtained in any suit or proceedings a prohibitory order, in execution of an order or judgment in such suit or proceedings, affecting any immovable property or registered interest therein, a further prohibitory order affecting the same property or interest shall not be made in the same suit or proceedings in execution of the same order or judgment on the application of such judgment creditor or of any other person unless the Court or a Judge by order otherwise directs, on the ground of the existence of special circumstances;

(j) a copy of every order made under this *rule shall be sent by the Court making the order to the Registrar of Titles of the State or to the Land Administrator of the District wherein the land affected is situated or to both as may be necessary*; and

(k) the Court may at any time, on sufficient cause being shown, order that property seized under this rule shall be released. (Emphasis added.)

[34] However, O 51A r 4 of the Rules of Court 2012 also provides for seizure of immovable property. Order 51A r 4 of the Rules of Court 2012 is also reproduced as follows:

4 Immovable property (O 51A r 4)

Where the property to be seized consists of *immovable property or any registered interest therein*, the following provisions shall apply:

(a) *seizure shall be made* by an order prohibiting the judgment debtor from transferring, charging or leasing such property or interest; and for the

purpose of this rule, 'charging' includes the creation of a lien by deposit of a document of title; A

(b) a copy of the order shall be served on the judgment debtor and one or more copies, as the case may require, shall be issued to the judgment creditor in order that he may *present the same, in compliance with any written law relating to such land, registration at the Registry of Titles or Land Office whereat the land or interest in land specified in such order is registered*; B

(c) a prohibitory order issued under this rule shall not affect any immovable property or registered interest therein and any immovable property or registered interest therein *shall not be deemed to have been seized until such prohibitory order has been registered as provided by any written law* relating to such land; and C

(d) subject to subparagraph (c), any prohibitory order shall, *upon the expiration of twelve months from the date thereof*, cease to affect the immovable property or registered interest specified in such order. D

[35] The Rules of Court 2012, which came into operation on 1 August 2012, were designed to provide a unified set of rules applicable to proceedings in both the High Court and the subordinate courts. They replaced the Rules of the High Court 1980 and the Subordinate Court Rules 1980. E

[36] However, unlike the Subordinate Court Rules 1980, the Rules of Court 2012 do not prescribe a specific form for a prohibitory order issued for the execution of monetary judgments under a writ of seizure and sale. F

See: O 30 r 13 of the Subordinate Court Rules 1980, the prescribed Form 80A.

[37] There is also a contradiction between O 47 r 6(f) and O 51A r 4(d) of the Rules of Court 2012. While O 47 r 6(f) provides that a prohibitory order expires six months after its issuance, O 51A r 4(d) prescribes a validity period of 12 months. G

[38] Perhaps it is time that the Rules Committee be recommended to review and revise the relevant provisions of the Rules concerned. This, perhaps could involve abolishing prescribed Form 85 as a separate form for the writ of seizure and sale for immovable property, and instead adopting Form 84 for the seizure and sale of both movable and immovable property. H

[39] Additionally, a specific form for a prohibitory order, similar to Form 80A under the former Subordinate Courts Rules 1980, could be prescribed for the effective seizure of immovable property. Perhaps, O 51A r 4 of the Rules of Court 2012 should be deleted to eliminate duplicity and inconsistencies, ensuring greater coherence in the application of the Rules concerned. I

[40] While the prescribed Form 85 under O 45 r 12 of the Rules of Court 2012 and O 46 r 4 of the Rules of Court 2012 provide authorisation of the seizure and sale of immovable property, O 47 r 6 and/or O 51A r 4 of the Rules of Court 2012 governs the mode for actual taking and seizure of immovable property or any registered interest therein pursuant to a writ of seizure and sale issued.

[41] Section 183 of the Land Code (Cap 81) provides as follows:

> 183 Executions, judgments and pending actions
>
> (1) The Registrar, on being *served with a copy of a writ of execution* or a judgment, decree or order of any court of competent jurisdiction and on *being satisfied that an interest in land which is noted on the Register is affected* thereby, shall mark on such copy the date of such service and *enter a memorandum thereof on the Register, and no dealing with the interest, pursuant to such writ, judgment, decree or order shall be effected until the memorandum has been so entered*.
>
> (2) *After the interest has been dealt with pursuant to any such writ*, judgment, decree or order, the Registrar shall, *on presentation of an instrument in the appropriate form, register such instrument if presented within a period of six months from the date of service on the Registrar, or within such further time as the Court which issued such writ, judgment, decree or order*, as the case may be, may in any particular case for special reasons allow, in which case no other instrument dealing with the interest and presented after the service of the copy but before the presentation of the first-mentioned instrument shall be registered or be deemed to be presented for registration; but, *if no such instrument is presented within the period of six months or such extended period as the Court may allow, the writ, judgment, decree or order shall cease to affect the interest*.
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> [Am. Ord. No. 3/79.]
>
> (3) *Save as provided in this section and in section 184, no execution or pending action shall affect any interest in land.*
>
> (4) *On the registration of transfer by way of sale pursuant to this section, the purchaser shall become the transferee and registered proprietor of the interest in all respects as if the transfer were a transfer for value by the registered proprietor*.
>
> (5) For the purposes of subsection (2) 'appropriate form' includes a form provided by or under any enactment or any written law and, if no provision has been made, means the appropriate form provided by or under this Code.

[42] The service or lodgement of the prohibitory order with the Registrar of Land under s 183 of the Land Code (Cap 81) and entry of a memorandum on the Register of Land is an equivalent of actual seizure of the immovable property.

[43] After the seizure of the immoveable property, O 47 r 7 of the Rules of Court 2012 provides for the sale of the immovable property seized.

[44] Order 47 r 7(b) of the Rules of Court 2012 provides that: A

> the particulars and conditions of sale *shall be settled by the Sheriff* or his solicitor. (Emphasis added.)

[45] Order 47 r 7(e) of the Rules of Court 2012 provides that: B

> where the interest of the judgment debtor in any immovable property, seized and sold under the order, includes a right to the immediate possession thereof, the *Sheriff or bailiff* shall put the purchaser in possession. (Emphasis added.)

C

[46] Order 47 r 7(f) of the Rules of Court 2012 allows any affected party to apply to set aside a sale on the grounds of material irregularity or fraud in its publication or conduct. Under r 7(g), a purchaser may also apply to set aside the sale on the ground that the judgment debtor had no saleable interest in the property. D

[47] Order 47 r 7(h)(i) of the Rules of Court 2012 stipulates that if no application is made by any party or the purchaser to set aside the sale, or if such an application is made but disallowed by the court, the court shall make an order confirming the sale, which will then become absolute. However, this order shall not be made until at least one month after the date of the sale. E

[48] Order 47 r 7(j) of the Rules of Court 2012 provides that the order confirming the sale made under O 47 r 7(h)(i) of the Rules of Court 2012: F

> shall contain a sufficient description of the property or interest sold and the name of the purchaser and shall further declare that the title of the property sold *shall vest in such purchaser* upon the registration of such order under any written law relating to such land, and not before. (Emphasis added.)

G

[49] Order 47 r 7(h)(ii) of the Rules of Court 2012 provides that a copy of the order confirming the sale shall be issued to the purchaser for registration under any written law relating to the land. Further, r 7(h)(iii) states that such an order shall, for the purposes of the Stamp Act 1949 (Act 378), be deemed a conveyance and must be stamped as such by the purchaser. H

[50] Order 47 r 7(k) of the Rules of Court 2012 provides that:

> (k) pending the execution or endorsement of any deed or document which *is ordinarily lawfully required to give effect to any sale by the Sheriff or bailiff*, the Court or a Judge may by order appoint the Sheriff or bailiff to receive any rents and profits due to the purchaser in respect of the property sold; and (Emphasis added.) I

[51] Order 47 r 7(l) provides that:

A the Sheriff or bailiff may at any time apply to the Court or a Judge for directions with respect to the immovable property or any interest therein seized under the order and may, or, if the Court or a Judge so directs, must, give notice of the application to the judgment creditor, the judgment debtor and any other party interested in the property.

B

[52] Although the seizure is effected through a prohibitory order issued, served, or lodged with the Registrar of Land, with the corresponding memorandum entered into the Register under s 183 of the Land Code, the sale pursuant to the writ of seizure and sale is to be conducted by the Sheriff or Bailiff.

C

[53] As to the vesting order made by the court confirming the sale under O 47 r 7(j) and r 7(h) of the Rules of Court 2012, s 171 of the Land Code (Cap 81) provides that:

D

171 Vesting orders of court

(1) Where the vesting of *any land or estate or interest therein* in any person has been made pursuant to an order of a court of competent jurisdiction or under any written law in force in the Federation or any part thereof, the person who is entitled to *the land or estate or interest therein* may, subject to subsection (3), lodge an application in Form N(1) in the First Schedule with the Registrar to give effect thereto:

E

Provided that no Order of the Court vesting *any land or estate or interest therein* in such person shall *affect such land or estate or interest therein* until it has been registered pursuant to this section.

F

(2) The Registrar shall, upon receipt of the application lodged under subsection (1) and upon being satisfied that the necessary stamp duty has been paid, make an appropriate entry in the Register, the document of title and such other documents as may be necessary that *the land or estate or interest therein* has been vested in the applicant without being concerned to inquire into its regularity or validity, and upon that entry being made, *the land or estate or interest therein* shall be vested in the applicant (subject to such subsisting charges, caveats, covenants, conditions or restrictions, if any, as may be binding on the applicant) on the date of the entry in the Register. The Registrar shall also record the like particulars on the relevant documents of title, charge, caveat or other instruments submitted or affected thereby. *The instruments so entered in the book of the registry shall thereupon be as valid and effectual as if they have been registered in accordance with Part VII*.

G

H

(3) The applicant shall, when applying to the Registrar under subsection (1), submit to the Registrar*

I

(a) the relevant legislation to which the application is founded on;

(b) the relevant document of title of the land affected;

(c) a certified copy of the relevant Court order vesting the land or estate or interest therein in the applicant; and

(d) any other document to prove that the applicant is legally entitled to be vested as the proprietor of the land or estate or interest therein.

(4) In the case of any instrument registered in accordance with this section, a certificate from the Registrar declaring the applicant to have been so vested and *registered as proprietor of the land or estate or interest therein* or as a person named in the instrument, charge or caveat registered, shall be conclusive proof of the registration.

[Sub. Cap. A17.]

[54] Under s 112(1) of the Land Code (Cap 81), the Registrar of the Land shall keep or maintain a prescribed Register and record particulars of all instruments, dealings and other matters required to be registered or entered into the Register.

[55] Section 2 of the Land Code (Cap 81) defines 'dealings' as:

every transfer, charge, lease or other instrument affecting any estate or interest under this Code.

[56] Whereas, the term 'instrument' is defined as:

any printed or written document relating to the transfer of, or other dealing with, land, or evidencing title thereto, but does not include a caveat.

[57] The phrase 'any land, estate, or interest therein' under s 171 of the Land Code (Cap 81) appears to encompass 'dealings' as defined under the Land Code (Cap 81), which are only recognised and can be registered by the provisions of the Land Code (Cap 81).

[58] In this case, the defendants'/judgment debtors' unregistered equitable interest in Lot 8051, specifically their rights as purchasers against two of the co-proprietors under the said sale and purchase agreement, is not a recognised dealing that can be registered under any provision of the Land Code (Cap 81) until the instrument of transfer, executed by all the co-proprietors in favour of the defendants/judgment debtors, is duly registered.

[59] Even if such an unregistered equitable interest could be seized and sold, the purchaser would acquire only so much of the right of the defendants/judgment debtors' right as against the vendors under the said sale and purchase agreement.

[60] To render the interest in Lot 8051 registrable, the purchaser would still be required to take further steps, such as suing the two co-proprietors for specific performance or pursuing other legal remedies by virtue of the said sale

A and purchase agreement, that the defendants/judgment debtors themselves would have had to undertake.

[61] In *Reference by the Registrar of Titles, Selangor, under section 238 of the Land Code, 1926* [1935] 1 MLJ 287, a case candidly and honourably brought to the court's attention by learned counsel for the plaintiff/judgment creditor, Justice Thomas CJ held that a prohibitory order cannot be registered in respect of the beneficial interest of a person whose name does not appear on the register. At p 288, His Lordship stated:

> ... the register is not a means of recording anything which may happen with regard to land. This is clearly demonstrated by s 87 of the Land Code which provides that the proper registering authority shall decide whether an instrument is fit for registration. By such means the register is kept free from alien matters which do not concern the registered title.

[62] Similarly, the land register that the Registrar of Land is required to maintain is intended to record particulars of instruments, dealings, and other matters that are registrable under the provisions of the Land Code (Cap 81). It does not extend to recording the defendants'/judgment debtors' unregistered equitable interest in Lot 8051, specifically, their right of action against the vendors under the said sale and purchase agreement.

[63] In *Scott v Scholey and another* (1807) 103 ER 423, the court held that an equitable interest in a leasehold (a term of years) could not be seized or sold under a writ of fieri facias (equivalent of writ of seizure and sale) issued by a common law court to satisfy a judgment debt. The court reasoned that equitable interests, being intangible, could not be physically seized. Moreover, the Sheriff could neither ascertain their value due to potential encumbrances nor deliver possession to a purchaser. It was held that the judgment creditor would need to seek relief through a court of equity, such as by way of equitable execution.

[64] Similarly, in *Re Livi; Real Property Act* (1930) 30 SR (NSW) 447, the court held that only interests in land capable of actual seizure, such as corporeal estates like fee simple, could be subject to execution under a writ of fieri facias. In that case, although the mortgagee's interest was technically an 'interest in land,' it was merely a charge with a power of sale. As an intangible interest, it was not corporeal property and therefore could not be physically seized or sold under a writ of *fieri facias*.

[65] Applying the same principle, the defendants'/judgment debtors' unregistered equitable interest in Lot 8051, being a right of action arising from the said sale and purchase agreement made with the vendors, is likewise an intangible interest in land. As such, it is not capable of being seized by a

prohibitory order or sold under a writ of seizure and sale.

[66] The phrase 'immovable property or any registered interest therein' in O 47 r 6 and O 51A r 4 of the Rules of Court 2012 should be interpreted in the context of interests that are capable of registration under the provisions of the Land Code (Cap 81), and which are also capable of being taken or physically seized and sold pursuant to a writ of seizure and sale.

[67] For the reasons stated above, the prohibitory order and writ of seizure and sale sought by the plaintiff/judgment creditor are not appropriate modes of execution in respect of the defendants'/judgment debtors' unregistered equitable interest in Lot 8051.

[68] Accordingly, the court dismisses the plaintiff's/judgment creditor's notice of application (ex parte) dated 15 January 2025 (encl 1).

Application dismissed.

Reported by Nabilah Syahida Abdullah Salleh